IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1887 OF 2004

IN

SUIT NO. 3076 OF 2004

Umraomal Sardarmal Sanche**ti** **..Plaintiff**

versus

Smt. Pushpabai Parekh ..Defendant

Mr. A. M. Saraogi for the Plaintiff.
Mr. Pradeep Sancheiti i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe for the Defendant.

CORAM : D. G. DESHPANDE,J.

DATE ; 20TH SEPTEMBER, 2004

P.C. :

. Heard Advocate for the Plaintiff and the Defendant.

. By this notice of motion under Order XII Rule 6 of CPC the plaintiff seeks decree on admission against the defendant. The admission according to the plaintiff is given by the defendant in Agreement which the defendant entered into with the prospective purchasers. That agreement is annexed with the plaint. These prospective

purchasers ultimately filed a suit before the District Judge, Jodhpur, copy of which is annexed as Exhibit 'E' to the affidavit in support of the notice of motion. In that suit copy of the written statement is also annexed and from the said written statement and particularly paragraph 5 the plaintiff wants to contend that the defendant had given clear cut admission of their liability.

. It has to be borne in mind that the defendants in the suit before the Jodhpur Court were defending the claim on the basis of the agreement. A perusal of the written statement shows that they have raised all possible pleas challenging the legality, validity and genuineness of the said agreement and when therefore number of such pleas are raised and in defence they say something about the purpose of the agreement as pointed out by Advocate for the Plaintiff in paragraph 5, that will not constitute and it does not constitute any admission on the basis of which any decree can be passed. This court has held earlier in the notice of motion filed by the plaintiff whether an admission was given by the defendant is a matter of evidence. That observation still is applicable. There is no merit in the notice of motion. Notice of Motion is dismissed.

. Certified copy expedited.

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